

REMARKS/ARGUMENTS

The above identified patent application has been amended and reconsideration and allowance are hereby requested.

Claims 1-20, 24 and 25 are now in the application. Claims 21-23 are cancelled. Claims 1, 10, 14 and 18 are amended.

The Examiner has rejected claims 1-20, 24 and 25 under 35 U.S.C. §103(a) as allegedly being obvious over Sadinsky et al. (US 5, 664,769) in view of Applicant's admitted prior art (APA) and Fingerson et al. (US 6,126,147).

Claim 1 recites, in part (underlining added for emphasis): "a plurality of poles, each of the plurality of poles including an insert within the pole and a pin having a top length within the pole and extending parallel to a longitudinal axis of the pole and . . . wherein a substantial portion of the top length is fixedly attached along the top length to the insert [and] support means capable of withstanding lateral tension forces of the mesh screen for supporting and latching the gate, the support means comprising at least a first gate pole of the plurality of poles attached to one of the pair of spaced upright support members on one side of the gate opening and a second gate pole of the plurality of poles attached to the other of the pair of spaced upright support members on another side of the gate opening."

Claim 10 recites, in part (underlining added for emphasis): "a plurality of poles, each of the plurality of poles including an insert within the pole and a pin having a top length within the pole and extending parallel to a longitudinal axis of the pole and . . . wherein a substantial portion of the top length is fixedly attached along the top length to the insert [and] support means to which the first length of mesh screen is attached for supporting the fence and gate . . . the support means comprising at least one gate pole of the plurality of poles on each opposite side of the gate opening attached to one of the pair of spaced upright support members."

Claim 14 recites, in part (underlining added for emphasis): "a plurality of poles, the plurality of poles including an insert within each pole and a pin having a top length within the pole and extending parallel to a longitudinal axis of the pole and . . . wherein a substantial

portion of the top length is fixedly attached along the top length to the insert [and] removably inserting the bottom end of each pin . . . into a deck surrounding a swimming pool . . . wherein first and last poles of the plurality of poles define the gate opening, the first and last poles each constituting a pair of gate poles of the plurality of poles."

Claim 18 recites, in part (underlining added for emphasis): "A gate and a pair of gate poles for the gate in a tensioned removable swimming pool fence, each of the pair of gate poles comprising: . . . an insert within the lower end of each of the pair of gate poles; and a pin . . . including a top length within the pole and extending parallel to a longitudinal axis of the pole . . . wherein the top length is fixedly attached along the top length to the insert."

The Examiner states that Sadinsky et al. fails to disclose, among other things, "a fence and gate wherein each of the plurality of poles includes an insert within each pole and a pin fixedly attached along a top length of the pin to each insert." Office action, pp. 3-4.

The Examiner further indicates that it would have been obvious to "modify the fence and gate disclosed by Sadinsky et al. . . . in order to enable one to use less noticeable, smaller diameter holes in the pool decking" Office action, p. 4 (emphasis added).

Additionally, the Examiner indicates that since "the references disclose screws and adhesive bonding as art recognized equivalents for securely attaching a pin within a fence pole, it would have been obvious to one of ordinary skill in the exercise art to substitute one for the other." Office action, pp. 4-5.

The Applicant respectfully traverses the Examiner's rejection.

Each independent claim listed above claims "gate poles" comprising "an insert" and "a pin fixedly attached along the top length of the pin to the insert." As Applicant has noted in previous responses, while APA may teach fence pole designs "where smaller diameter steel pins were mounted at the lower end of a fence pole such that smaller holes, capable of receiving the smaller diameter pins, could be placed in the pool decking . . . [s]uch pins have not been used at the gate structure for pool fences because of a perceived need to provide a more stable, rigid structure at and near the gate." More specifically, the fence poles, plastic pipe and steel pin as taught in the APA "would then be held in place by a screw placed through a bore drilled across

the fence pole, plastic pipe and steel pin from side to side of the pole." However, "attaching the pin to the pole using a cross screw is a difficult process; three components must be held steady during drilling of a cross hole and then placement of the screw to ensure that everything lines up. The resulting attachment is also subject to failure should the cross screw shear during any twisting of the three components relative to one another. According, a more stable and reliable fence pole with a smaller diameter pin at its lower end would be desirable, as would a lightweight fence incorporating such poles, including even at and near any gate structure" (emphasis added). Clearly, APA teaches away from pins being mounted on a gate pole because of stability concerns at or near any gate structure. Accordingly, it would not have been obvious to one of ordinary skill in the art at the time the invention was made to combine Sadinsky et al. with APA.

Fingerson et al. states that "[t]he shaft 34 of the auger base 32 may be coupled to the lower portion 26 of the corner post 22 using any number of coupling arrangements, including bonding, riveting, bolting, press-fitting, etc." However, other than this broad statement of coupling arrangements, the specification and figures of Fingerson describe in detail only the shaft 34 connected to the corner post 22 by "a fastener 35, such as a bolt or pin" disposed through a bore 33 in the shaft. As will be appreciated, when inserted through a bore, the bolt or pin fastens the shaft 34 to the corner post at the bore which has a diameter substantially equivalent to a diameter of the shaft of the bolt or pin (see, e.g., FIG. 3B of Fingerson) in the order of about five-sixteenth of an inch (Col. 3:5-6). If the shaft 34 were bonded to the corner post equivalently to the bolt or pin, the bonding between the shaft 34 and the corner post 22 would have a size roughly equivalent to the bore diameter, i.e., a bonding "spot." As such, Fingerson does not teach the auger shaft 34 "fixedly attached along the top length" to the corner post 22.

Additionally, the Examiner states that "[i]nasmuch as the references disclose screws and adhesive bonding as art recognized equivalents for securely attaching a pin within a fence pole, it would have been obvious to one of ordinary skill in the art to substitute one for the other." (Office action, p. 5, emphasis added). If indeed this were the case, one of ordinary skill in the art

would not expect to find any differences resulting from the use of a screw versus bonding and therefore, one of ordinary skill in the art would not turn to the coupling arrangement teachings of Fingerson et al. to use bonding instead of a screw. Rather, one of ordinary skill would believe that this would similarly be ineffective for a gate pole. However, as noted in the Declaration of Steven E. Sadinsky in Support of Amendment After Decision on Appeal ("Sadinsky Decl."), filed on May 14, 2007, the Applicant states that "I found a surprising and unexpected improvement in the structural integrity of the poles using an adhesive as the attachment means as opposed to screws. Particularly, when I used an adhesive as the attachment means and applied a large force to the poles, I found that the poles would bend, but not break as when a screw was used as the attachment means." Sadinsky Decl., par. 3 (emphasis added). That is, bonding turned out not to be equivalent to a screw in this context. The Examiner's statement regarding "recognized equivalents" illustrates how unexpected the difference in performance would be.

Because of the surprising and unexpected improvement of the poles bending, it would not have been obvious to one of ordinary skill in the art at the time of the invention to fixedly attach the pin along a top length of the pin to the insert instead of using a screw. See, e.g., *In re Corkill*, 711 F.2d 1496 (Fed. Cir. 1985) ("A greater than expected result is an evidentiary factor pertinent to the legal conclusion of obviousness").

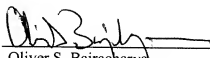
The above-cited limitations as claimed in claims 1, 10, 14 and 18 are not present in the Sadinsky et al., APA or Fingerson et al. references. Further, there is no apparent reason why one skilled in the art at the time the invention was made would have combined Sadinsky et al. and APA and Fingerson et al. to arrive at the claimed invention. Accordingly, the invention claimed in claims 1, 10, 14 and 18 is patentable over Sadinsky et al. in view of APA and Fingerson et al. Claims 2-9, 11-13, 15-17, 19, 20, 24 and 25 are dependent on claims 1, 10, 14 or 18. As such, these claims are allowable based on claims 1, 10, 14 or 18 for at least the reasons above and for the additional limitations they contain.

In view of the above amendments and remarks, the claims are patentably distinct over the prior art of record and all of the rejections of the claims have been overcome. As such, allowance of the above Application is requested.

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The Examiner is invited to call Applicant's attorney at the number listed below if there are any remaining issues that can be addressed over the telephone.

Respectfully submitted,
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